

§§ 204.57–204.59 [Reserved]

Subpart D—Administrative Wage Garnishment

AUTHORITY: 31 U.S.C. 3720D, 31 CFR 285.11(f).

SOURCE: 66 FR 54132, Oct. 26, 2001, unless otherwise noted.

§ 204.60 Purpose.

This subpart provides procedures for the Commission to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy a delinquent nontax debt owed to the United States.

§ 204.61 Scope.

(a) The receipt of payments pursuant to this subpart does not preclude the Commission from pursuing other debt collection remedies, including the offset of Federal payments to satisfy a delinquent nontax debt owed to the United States. The Commission may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(b) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

§ 204.62 Definitions.

The following definitions apply to this subpart:

Debt or delinquent nontax debt means any money, funds or property that has been determined to be owed to the Commission by an individual that has not been paid by the date specified in the demand or order for payment, or applicable agreement. For purposes of this subpart, the terms “debt” and “claim” are synonymous.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this subpart,

“amounts required by law to be withheld” include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this subpart, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”

§ 204.63 Notice.

(a) At least 30 days before the initiation of garnishment proceedings, the Commission will mail, by first class mail to the debtor's last known address, a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The Commission's intention to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) An explanation of the debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise these rights.

(b) The debtor will be afforded the opportunity:

(1) To inspect and copy records related to the debt;

(2) To enter into a written repayment agreement with the Commission, under terms agreeable to the Commission; and

(3) To the extent that a debt owed has not been established by judicial or administrative order, to request a hearing concerning the existence or

amount of the debt or the terms of the debt's repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.

(c) The notice required by this section may be included with the Commission's demand letter required by subpart A of this part.

(d) The Commission will keep a copy of the certificate of service indicating the date of mailing of the notice.

§ 204.64 Hearing.

(a) *Request for hearing.* The Commission will order a hearing, which at the Commission's option may be oral or written, if the debtor submits a written request for a hearing concerning, for debts not previously established by judicial or administrative order, the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 204.63(b)(2)), or for debts established by judicial or administrative order, the payment or other discharge of the debt.

(b) *Type of hearing or review.* (1) For purposes of this subpart, whenever the Commission is required to afford a debtor a hearing, the Commission will provide the debtor with a reasonable opportunity for an oral hearing when the Commission determined that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the Commission determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the Commission. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(3) In those cases when an oral hearing is not required by this section, the Commission will nevertheless accord the debtor a "paper hearing," that is, the Commission will decide the issues in dispute based upon a review of the written record.

(c) *Effect of timely request.* Subject to paragraph (1) of this section, if the debtor's written request is received by the Commission on or before the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission will not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with paragraphs (i) and (j) of this section has been rendered.

(d) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission shall provide a hearing to the debtor. However, the Commission will not delay issuance of a withholding order unless the Commission determines that the delay in filing the request was caused by factors over which the debtor had no control, or the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order.

(e) *Hearing official.* All hearings shall be presided over by the Commission, or if the Commission so orders, by a hearing official. When the Commission designates that the hearing official shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30-10, the administrative law judge to preside.

(f) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(g) *Burden of proof.* (1) The Commission will have the burden of going forward to prove the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt,